



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Susan M. Lessard, Chair

Cynthia S. Bertocci
Executive Analyst

Terry Dawson

PAUL R. LEPAGE
GOVERNOR

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

December 1, 2011

A meeting of the Board of Environmental Protection was held on Thursday, December 1, 2011, at the Civic Center, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Alvin Ahlers, Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould, and Susan M. Lessard

Staff: Mike Mullen, Director Bureau of Land and Water Quality
Richard Kaselis, Bureau of Remediation and Waste Management
Jim Glasgow, Bureau of Land and Water Quality
Marybeth Richardson, Bureau of Land and Water Quality
Lisa Vickers, Bureau of Land and Water Quality

Others: Patricia Aho, Commissioner
Peggy Bensinger, Assistant Attorney General
Cynthia S. Bertocci, BEP Executive Analyst
Terry Dawson, BEP Administrative Assistant

(Meeting adjourned at approximately 2:30 p.m.)

Chair Lessard began the meeting with a rulemaking public hearing as follows:

- **Public Hearing at 9:00 a.m. In The Matter Of:**

Chapter 305 Permit-By-Rule, Section 20 Activities Located In, On or Over High or Moderate Value Inland Waterfowl and Wading Bird Habitat, or Shorebird nesting, Feeding, and Staging Areas / Amendments

The Board voted (7-0-0-0) on a motion to continue the public hearing for the purpose of further evaluating the science referenced at the hearing as developed by the Department of Inland Fisheries and Wildlife. Board staff is to coordinate the date and time for continuation of the hearing based on Board member and technical staff availability.

The vote was taken pursuant to 38 M.R.S.A. 341-H. Board members Alvin Ahlers, Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion.

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS:

Shoreland Zoning: Department staff has continued its stakeholder work and anticipates concluding regular meetings this month on potential amendments to the Shoreland Zoning Guidelines. Work will formally wrap-up within the next few weeks with the submission of a report to the Legislature in January.

Department Awards: The Department held its annual staff meeting at the Augusta Armory. In addition to honoring staff with career service pins, Commissioner Aho also presented the following distinguished awards:

- Evelyn Jephson Award for Environmental Achievement: -- Roy Bouchard, head of DEP's lakes unit who has helped create one of the most progressive and successful lake management programs in the country;
- Customer Service Award -- Sandy Moody, Environmental Technician in the Bureau of Remediation and Waste Management;
- Manager of the Year Award -- Dave Courtemanch, Director - Division of Env. Assessment in the Bureau of Land and Water Quality; and
- Commissioner's Award -- Jeff Emery (retired) in the Bureau of Air Quality who has made Maine a national leader in air quality monitoring.

Wales Beach: The Department of Marine Resources (DMR) has re-opened a 20-acre area of Wales Beach in Northport for shellfish harvesting. During a shoreline sanitary survey conducted by the Department of Environmental Protection and DMR, a malfunctioning septic system was discovered; resulting in the September closure. A replacement septic system was installed in October resolving the matter.

B. COMMENTS FROM THE BEP CHAIR:

McCormick: Assistant Attorney General Bensinger noted a recent decision from the Cumberland County Superior Court regarding the title to real estate in the Christopher McCormick matter (*McCormick v. LaChance et al.*, Docket No. CV-08-557). Ms. Bensinger recapped the BEP November 2008 administrative stay of the appeal and

petition to revoke. The Superior Court decision is being reviewed and it is likely that this matter will be brought back before the Board at a future meeting.

- C. **EXECUTIVE ANALYST COMMENTS:** None
- D. **BOARD CALENDAR:** Reviewed
- E. **DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** Reviewed.
- F. **EXECUTIVE SESSION:** None

II. CONSENT AGENDA ITEMS:

1. BEP MEETING MINUTES – November 3, 2011 (Approval)

The Board voted (5-0-2-0) to approve consent agenda item 1 as presented.

The vote was taken pursuant to 38 M.R.S.A. §341-D.

Board members Alvin Ahlers, Gary Curtis, Robert Foley, Richard Gould, and Susan M. Lessard voted to support the motion. Board members Elizabeth Ehrenfeld and M. Wing Goodale abstained.

III. Regular Agenda

1. INNOVATIVE RESOURCE ENVIRONMENTAL CORP. // COMMERCIAL WASTE OIL STORAGE FACILITY - MAINE HAZARDOUS WASTE, SEPTAGE AND SOLID WASTE MANAGEMENT ACT, Winthrop (permit approval)

Staff: Richard Kaselis, Bureau of Remediation and Waste Management

The Board voted (7-0-0-0) to approve the permit for Innovative Resource Environmental Corp for a commercial waste oil storage facility with the following amendments:

- Pg 3: A detailed description of the 4 2 areas of the facility....
- Pg 3: include the following new language
1C.i. Tank Storage Area: ...walls which would contain a discharge inside the building. This building will suffice as a means to meet the requirement to control access pursuant to Chapter 860, Section 10 D.1
- Pg 16 Conditions
7. Innovative shall.... both by the licensee and by a State of Maine licensed ~~registered~~ professional engineer...
- Attachment A: modified to include units of measurement to the table.

The vote was taken pursuant to 38 M.R.S.A. Section 1301 through 1319-Y and 06-096 CMR Chapter 860, Maine Waste Oil Management Rules.

Board members Alvin Ahlers, Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion.

2. PETER BENARD // MCKEARNEY VILLAGE - SITE LOCATION OF DEVELOPMENT ACT and NATURAL RESOURCES PROTECTION ACT (appeal by Mary Dowd of BEP Chair Ruling to Dismiss the Appeal)

Staff: Lisa Vickers, Bureau of Land and Water Quality

The Board voted (6-0-1-0) on a motion to deny the appeal of the Chair's ruling (dated August 12, 2011) which dismissed the appeal submitted by Mary Dowd regarding Department Order #L-25260-L3-A-N and #L-25260-TC-B-N approval for construction of a 38 lot residential sub-division in Yarmouth. The vote affirmed the Chair's ruling that Dr. Dowd did not submit evidence sufficient to demonstrate standing to appeal the Commissioner's decision.

The vote was taken pursuant to 38 M.R.S.A. sections 344 and 341-D and 06-096 CMR Chapter 2, Rules Concerning the Processing of Licenses and Other Administrative Matters.

Board members Gary Curtis, Elizabeth Ehrenfeld, Robert Foley, M. Wing Goodale, Richard Gould and Susan Lessard voted to support the motion. Board member Alvin Ahlers recused.

Next Regular Meeting – January 5, 2011 – Dept. of Public Safety, Florian Hall, Augusta